

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

CRIM. NO. 17-30335

v.

HON. TERRENCE G. BERG

MARK GOJCAJ,

Defendant.

/

**ORDER DENYING GOVERNMENT'S
APPEAL (DKT. 10) WITHOUT PREJUDICE**

This case is before the Court on the Government's appeal of "Magistrate Judge's unlawful order of release" (Dkt. 10). Defendant made an initial appearance on a criminal complaint before the Magistrate Judge on July 19, 2017. The complaint charges Defendant with Possession of Controlled Substances with Intent to Distribute, in violation of 21 U.S.C. § 841(a)(1).

The Government moved for detention and the Magistrate Judge scheduled a detention hearing for July 21, 2017 at 1:00 p.m. – which is today. After the Government moved for detention, the Magistrate Judge

conditionally released Defendant until the detention hearing. The Government points out that the charges in this case create a rebuttable presumption that detention is appropriate, and also that when the Government moves for detention, it may seek a continuance of no more than three days during which the defendant “shall be detained” under 18 U.S.C. § 3142(f)(2).

Because the Magistrate Judge’s order granting conditional release until July 21, 2017 appears to be inconsistent with the requirements of 18 U.S.C. § 3142(f)(2), the Government seeks to appeal. There may well be merit to the Government’s position, but this appeal was not filed until today—the same date set for the Defendant to appear for the detention hearing. Thus, the issue raised in this appeal—that the Defendant should be detained until the date of the detention hearing—is effectively moot. If Defendant appears as directed for the detention hearing today, then the Magistrate Judge will hold the detention hearing and either party may appeal. If Defendant fails to appear, a bench warrant will be issued for his arrest.

As such, for the reasons set forth above,

The Government's appeal of the Magistrate Judge's order of conditional release is **DENIED WITHOUT PREJUDICE;**
IT IS SO ORDERED.

s/Terrence G. Berg

TERRENCE G. BERG, PRESIDING
UNITED STATES DISTRICT JUDGE

Dated: July 21, 2017

Certificate of Service

I hereby certify that this Order was electronically submitted on July 21, 2017, using the CM/ECF system, which will send notification to each party.

s/A. Chubb

Case Manager